

REMARKS

Reconsideration and withdrawal of the rejections set forth in the Office Action dated December 2, 2003 are respectfully requested.

I. Information Disclosure Statement

Applicants submitted an information disclosure statement on July 31, 2002 and a supplemental information disclosure statement on February 3, 2003. Applicants respectfully request that after consideration of the documents, the Examiner return the initialed and signed PTO-1449 forms to the Applicants.

II. Amendments

Claim 1 is amended to recite that L is a phospholipid. Basis is found in original claim 3.

Claim 15 is amended to dependent form.

Claims 3-6, 13, 14, 16-42 are cancelled.

III. Rejections under 35 U.S.C. § 112, second paragraph

Claims 3, 17, and 31 were rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Claims 3, 17, and 31 stand cancelled. Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §112, second paragraph.

IV. Double-Patenting Rejections

A. Statutory Double Patenting Rejection

Claims 1, 2, 4-16, 18-30, and 33-42 were rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 1-42 of U.S. Patent No. 6,365,179.

Claim 1 is amended to recite that L is a phospholipid. By this amendment, claim 1 is no longer drawn to subject matter identical to that of U.S. Patent No. 6,365,179.

B. Obviousness-Type Double Patenting Rejection

Claims 1, 2, 4-16, 18-30, and 33-42 were rejected under the judicially created doctrine of obviousness-type double patenting at being unpatentable over claims 1-42 of U.S. Patent No. 6,365,179. The Examiner noted that a timely filed Terminal Disclaimer in compliance with 36 C.F.R. §1.321(c) would overcome this rejection.

The present application and U.S. Patent No. 6,365,179 are commonly owned, as evidenced by the assignments of record to Alza Corporation and Hadasit Medical Research Services and Development Ltd. Thus, a terminal disclaimer can be filed to overcome this rejection. Enclosed herewith is an executed Terminal Disclaimer filed in accordance with C.F.R. §1.321(b) and (c) which disclaims the terminal portion of any patent issuing on the instant application that extends beyond the expiration of U.S. Patent No. 6,365,179.

The applicants submit that Terminal Disclaimer overcomes the rejection for obviousness-type double patenting and withdrawal of the rejection is respectfully requested.

V. Conclusion

In view of the foregoing, the claims pending in the application comply with the requirements of 35 U.S.C. § 112 and patentably define over the applied art. A Notice of Allowance is, therefore, respectfully requested. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (650) 838-4402.

Respectfully submitted,

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